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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/254,407	02/07/2000	MICHAEL WILLIAM GRADY	JJM-399	6913

7590

04/30/2002

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EXAMINER

WHITE, EVERETT NMN

ART UNIT

PAPER NUMBER

1623

DATE MAILED: 04/30/2002

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/254,407

Applicant(s)

GRADY ET AL.

Examiner

EVERETT WHITE

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Applicants amendment filed February 11, 2001 has been received and entered into the record.
2. Claims 1-16 are pending in the case.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **Unity of Invention**

4. Claim 16 has been withdrawn from consideration because of lack of unity of invention.
5. Applicant's arguments filed February 11, 2002 have been fully considered but they are not persuasive. Applicants argue that the burden for applicant for having to file, prosecute, and eventually maintain a second patent outweighs the additional searching, that would be required to have Claim 16 examined with the currently pending claims. This argument is not persuasive. However, if the pharmaceutical composition of the instant application from which instant Claim 16 refers to are found allowable, then the subject matter of Claim 16 may be rejoined.

### **35 U.S.C. 112, Second Paragraph Rejection**

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is not clearly stated. The phrase "selected from the group consisting of" should be changed to --whereby the sulfated polysaccharide is selected from the group consisting of-- or some other similar phrase.

### 35 U.S.C. 103 REJECTION

8. Claims 1-13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Easton (EP 140,596) in view of Tunc (US Patent No. 3,939,836) for the reasons already of record on pages 4 and 5 of the Office action mailed July 23, 2001.

9. Applicant's arguments filed February 11, 2002 have been fully considered but they are not persuasive. Applicants argue against this rejection on the grounds that the Easton reference contains no indication that the sulfated polysaccharides of the present invention are superior to other non-sulfated polysaccharides in binding MMP's as demonstrated by applicants comparative data. This argument is not persuasive since Easton indicates a sulfated polysaccharide as an example of a polysaccharide that can be present in his wound dressing. See sulphate dextrans on page 4, line 34 of the Easton EP patent. The Tunc patent also suggest the present of a sulfated polysaccharide, sulfated cellulose ester, that is well known as a component in wound dressings (see the mention of wound dressings in column 1, line 13 of the Tunc patent 836'). Accordingly, the rejection of Claims 1-13 under 35 U.S.C. 103(a) as being unpatentable over the Easton and Tunc references is maintained.

10. Claims 1-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Spilburg et al (U.S. Patent No. 5,679,375) for the reasons already of record on page 5 of the Office action mailed July 23, 2001.

11. Applicant's arguments filed February 11, 2002 have been fully considered but they are not persuasive. Applicants argue against this rejection on the grounds that it is not obvious to use something for internal bodily treatment of gastric ulcers for topical wound dressing or ointment applications and method to bind MMP's present in chronic wounds. Applicants argue that gastric ulcers are quite different from chronic ulcers. This argument is not persuasive because the instant claims are not limited to a particular treatment with regard to treatment of gastric ulcers or chronic ulcers. See instant Claim 15 wherein the medical condition is only stated to be a chronic wound, which is a broad description of the medical condition that is claimed for treatment.

Accordingly, the rejection of Claims 1-15 under 35 U.S.C. 103(a) as being unpatentable over the Spilburg et al patent is maintained.

12. This application contains claim 16 drawn to an invention subjected to a lack of unity of invention with traverse in Paper No. 12. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

13. **Summary:** Claims 1-15 are rejected; Claim 16 is withdrawn from consideration.

#### ***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### ***Examiner's Telephone Number, Fax Number, and Other Information***

15. For 24 hour access to patent application information 7 days per week, or for filing applications electronically, please visit our website at [www.uspto.gov](http://www.uspto.gov) and click on the button "Patent Electronic Business Center" for more information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. White whose telephone number is (703) 308-4621. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

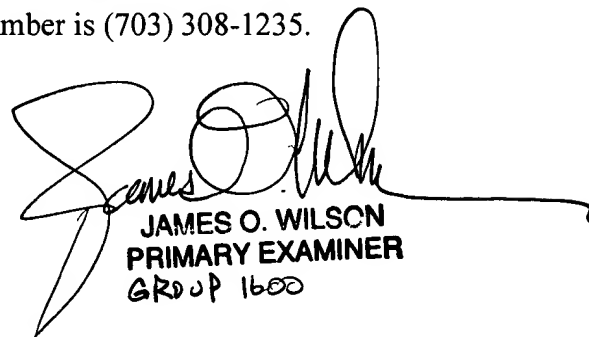
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter, can be reached on (703) 308-4532. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

*E. White*

White

April 24, 2002

  
JAMES O. WILSON  
PRIMARY EXAMINER  
GROUP 1600